



January 24, 2007

12-Month Permanency Hearing

Idaho Code § 16-1622; IJR 46

Purpose

- ✓ The purpose of the 12-month permanency hearing is to approve, modify, or reject the permanency plan and to review the child's current placement. Idaho Code § 16-1622(4); IJR 46.

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When

- ✓ State Law: no later than one year after the date the child was removed from the home or the date the child was found to be within the jurisdiction of the CPA, whichever is first, and every year thereafter. Idaho Code § 16-1622(4).
- ✓ Federal Law: within one year of the date the child entered foster care and at least every year thereafter. The date the child entered foster care is the date the court found the child within the jurisdiction of the CPA or 60 days from the date the child was removed from the home, whichever is first. 45 CFR 1355(20)(a). If the federal deadline is not met, the child will **lose eligibility for federal IV-E funding**. Eligibility may be reinstated once the federal requirements are met. 45 CFR 1356.21(b)(ii), 1355.20(a).

Best Practice Recommendations:

- ✓ Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- ✓ Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.

Who Should be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Age-appropriate children
- ✓ Child's tribal custodian, tribe, and tribal attorney, if applicable
- ✓ Foster Parents
- ✓ Assigned IDHW caseworker
- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate counsel if conflict warrants)
- ✓ Guardian *ad litem*, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s), if applicable

Best Practice Recommendation:

Foster parents are entitled to notice and an opportunity to attend the planning hearing but are not parties to the case. Idaho Code §§ 16-1620, 16-1621. IDHW should be required to notify the foster parents of permanency hearings after a case plan is approved.

The Permanency Plan

- ✓ The plan should:
 - address all options for the permanent placement of the child (refer to the Permanency Planning Options benchcard for more information);
 - address the advantages and disadvantages of each option in light of the child's best interest;
 - identify the option recommended as the child's permanent placement and a deadline for finalizing the permanent placement;
 - if reunification continues to be the primary plan for the child, set a deadline by which reunification will have been successfully achieved, or by which reunification efforts will cease;
 - specifically identify the actions necessary to implement the recommended option; and
 - address options for maintaining the child's connection to his/her community, including individuals with a significant relationship to the child, and organizations or community activities with which the child has a significant connection.
- ✓ If the child is in foster care, the plan should identify the current foster care placement for the child, including a statement of why that placement is the least disruptive environment that meets the needs of the child. (Refer to the Planning Hearing card or the Permanency Hearing – Aggravated Circumstances card for more information about foster care placement issues.)
- ✓ If the child is in foster care, the plan should identify the services to be provided to the child and the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, and/or to ensure the stability of the placement.
- ✓ The permanency plan should be verified or in the form of an affidavit.

Federal Finding

- ✓ The Court must make a determination that IDHW has made reasonable efforts to finalize the permanency plan that is in effect. This finding is a retrospective review of agency efforts. If the finding is not made in a timely fashion the child will be ineligible for Title IVE funding until the determination is made. 45 CFR 1356.21 (b)(2)(i) & (ii).
- ✓ **This finding must be made within one year of the date the child entered foster care and every twelve months thereafter.** The date the child entered foster care is the date the court found the child within the jurisdiction of the CPA, or 60 days from the date the child was removed from the home, whichever is first. 45 CFR 1355(20)(a). If the federal deadline is not met, the child will **lose eligibility for federal IV-E funding** at the end of the month in which the hearing should have been held or the finding should have been made. Eligibility may be reinstated once the federal requirements are met. 45 CFR 1356.21(b)(ii), 1355.20(a).

Practice Notes:

- ✓ Long-term foster care is the least preferred option for a “permanent” plan for the child. Before approving long-term foster care as the permanency plan, federal law requires that the agency document and the court find compelling reasons why termination of parental rights and adoption, guardianship, or long-term placement with a relative is not in the best interest of the child. 45 CFR 1355.20.
- ✓ There is a rebuttable presumption in favor of termination of parental rights and adoption if a child has been in the custody of IDHW and out of the home for 15 of the last 22 months from the date the child entered foster care. Idaho Code § 16-1629(9). The presumption may be rebutted by a finding of the court that termination of parental rights would not be in the best interest of the child, reasonable efforts have not been provided to reunite the child with the family, or the child is placed permanently with a relative.





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Best Practice Recommendations:

- ✓ The plan, once approved by the court or approved with modifications, should be incorporated in an order. For the 12-month permanency plan order, use the form provided in the Benchguide or found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>.
- ✓ In the permanency plan, SPECIFICITY IS EVERYTHING: it provides the road map to successful resolution of the case, it provides the primary mechanism for holding the participants accountable, and it defines "reasonable efforts."
- ✓ Stipulations: Do not approve the permanency plan based solely on the stipulation of the parties. Review the plan to ensure that it is complete and specific.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act 25 USC §§1901 *et seq.* If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1611(3) requires notice to each parent.) If notice has been given and a parent has not appeared, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the review hearing. Order the assigned caseworker and the GAL to attend. If reunification continues to be the long-term goal, require the parents to attend. Require IDHW to file a written progress report prior to the review hearing. The court may also require the GAL to file a written progress report.
- ✓ Enter transport orders to the permanency hearing for parents or children in state or local custody.
- ✓ Consult the Educational Needs Benchcard and evaluate the child's or youth's educational progress.